

Religious Liberty Sacralized: The Persistence of Christian Dissenting Tradition and the Cincinnati Bible War

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In November of 1869, two teams of lawyers in Cincinnati argued a case that gripped the nation. The city's school board had voted to end "religious instruction and the reading of religious books, including the Holy Bible" in schools in order to "allow the children of the parents of all sects and opinions, in matters of faith and worship to enjoy alike the benefit of the Common School fund."¹ Thus ended 40 years of opening the public school day with Bible reading and hymn singing.

1. Harold M. Helfman, "The Cincinnati 'Bible War,' 1869–1870," *The Ohio State Archeological and Historical Quarterly* 60 (1951): 369–86; and F. Michael Perko, *A Time to Favor Zion: The Ecology of Religion and School Development on the Urban Frontier, Cincinnati, 1830–1870* (DeKalb, IL: Educational Studies Press, 1988).

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Critics of the board often assumed that the Bible's opponents were religious rationalists or Catholic conspirators. The first because they doubted the scriptures, and the second because Catholic priests feared parishioners would find within its pages no justification for their church's hierarchy. In truth, the school board's purposes were more pluralistic than anti-Bible. Its members hoped to draw into the schools the increasing population of Catholic children whose parents did not use the King James Version of the Bible. Failed negotiations on possible consolidation of public and parish schools had happened that summer.² The change in policy rendered moot the question of which Bible translation to use, thus making space for Jews and less orthodox believers.³ But the city's Protestant elite, including the mayor, leading city merchants, and former school board presidents, organized mass protest meetings and a petition drive. Although the local Catholic archbishop did little more than welcome "the exclusion of Sectarianism from the Public Schools," the Bible War provoked a nationwide debate filled with anti-Catholic editorials and cartoons from local newspapers to *Harper's Weekly* and the *New York Times*.⁴ A local editor wrote that the issue "exploded a bomb which seems to have awakened all Christendom."⁵ It was dubbed the "Bible War."

When the school board approved the anti-Bible resolution, opponents petitioned the local court to issue a restraining order. The constitutional questions turned on two clauses in the Ohio Constitution of 1851 and their effect on the discretionary power of school boards under state law. One guaranteed religious liberty to its inhabitants. The other declared that "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction." Did starting the school day with the King James Bible fulfill the mandate of the religion, morality, and knowledge clause? Or violate the religious liberty clause? Did state law require the school

2. On public and parochial school consolidation, see Benjamin Justice, *The War That Wasn't: Religious Conflict and Compromise in the Common Schools of New York State, 1865–1900* (Albany: State University of New York Press, 2005), 197ff.

3. Although earlier regulations were supposed to have left Bible translations moot, teachers apparently did favor the King James Bible.

4. Quoted in George R. Sage, Rufus King, and Wm. M. Ramsey, *The Bible in the Public Schools Proceedings and Addresses at the Mass Meeting, Pike's Music Hall...* (Cincinnati: Gazette Steam Book and Job Printing House, 1869), 3; see Thomas Nast, "Church and State: Europe, United States," *Harpers Weekly*, February 19, 1870, 121; "Shall We Surrender Our Common Schools?" *New York Times*, March 21, 1870, 4.

5. "City Matters...The Biblical Discussion," *Cincinnati Enquirer*, September 14, 1869, 8. Database newspaper article title errors corrected throughout.

board to keep the Bible, remove it, or do as it pleased? By a vote of two to one, the Cincinnati Superior Court ruled that the constitution required religious instruction and made the restraining order perpetual in February of 1870. But the school board appealed and won before a unanimous Ohio Supreme Court in 1873.

Technically, Ohio Chief Justice John Welch did little more in *Board of Education v. Minor* than acknowledge the breadth of local discretion under Ohio law: school boards could assign the Bible or not as they pleased; the constitution neither required nor barred it. Yet mid-twentieth century legal scholars named *Minor* “one of the earliest and most important” decisions to hold Bible reading unconstitutional.⁶ Leo Pfeffer wrote that Welch’s expansive dicta led “logically” to “holding that Bible reading in the public schools is inconsistent with the principle of separation” of church and state.⁷ Thirty years later, a leading bibliographic essay identified the Ohio decision as a dividing point in the secularization of the law and the schools, and many scholars continue to identify the decision in this way.⁸ An account of “the death of the Christian nation,” claims that the decision “marked the first fully secular rationale for religious liberty.”⁹ More recently, Steven K. Green echoes Pfeffer: “For the first time,” judges declared Bible reading “unessential for a common education or republican society” and “inconsistent” with constitutional principles.¹⁰

6. R. Freeman Butts, *The American Tradition in Religion and Education* (Boston: Beacon Press, 1950), 138–41; William Kailer Dunn, *What Happened to Religious Education? The Decline of Religious Teaching in the Public Elementary School* (Baltimore: Johns Hopkins Press, 1958), 9 (reprint of table found in Burton Confrey, *Secularism In American Education: Its History* [Washington, DC: Catholic Education Press, 1931], 124–25).

7. Leo Pfeffer, *Church, State, and Freedom* (Boston: Beacon Press, 1953, revised edn. 1967), 443.

8. John W. Lowe, Jr., “Church-State Issues in Education: The Colonial Pattern and the Nineteenth Century to 1870,” in *Church and State in America: A Bibliographical Guide: The Colonial and Early National Periods*, ed. John Frederick Wilson (New York: Greenwood Press, 1987), 297–329, at 309. See also Peter W. Williams, *America’s Religions: from Their Origins to the Twenty-First Century*, 4th ed. (Urbana: University of Illinois Press, 2015), 203; Paul C. Gutjahr, *An American Bible: A History of the Good Book in the United States, 1777–1880* (Stanford: Stanford University Press, 1999), 140; David Sehat recognizes the technical limitations in *The Myth of American Religious Freedom* (Oxford: Oxford University Press, 2011), 160–62.

9. H. Frank Way, “The Death of the Christian Nation: The Judiciary and Church-State Relations,” *Journal of Church and State* 29 (1987): 509–29, at 520.

10. Steven K. Green, *The Bible, the School and the Constitution: The Clash that Shaped Modern Church-State Doctrine* (New York: Oxford University Press, 2012), 134. See also his “The Nineteenth-Century ‘School Question’: An Episode in Religious Intolerance or an Expansion of Religious Freedom?” in *The Lively Experiment: Religious Toleration in America from Roger Williams to the Present*, ed. Chris Beneke and Christopher S. Grenda (Lanham, MD: Rowman & Littlefield, 2015), 161–73, at 170.

This article challenges these varied claims by interrogating the meaning of secularization of the law. Did the law secularize when: Lawyer Stanley Matthews of Cincinnati argued that both constitutional law and Christian duty compelled judges to end compulsory Bible reading? When Justice Welch declared compulsory Bible reading in public schools contrary to “Christian republicanism”? When *Minor* left local communities to decide, creating a metropole/periphery divide in practice? When Cincinnati’s pedagogues, deprived of Bible reading, adopted a memorization program of “the literature of Christendom”? Or when the Ohio state attorney general declared Bible reading in the schools constitutional in 1923? This article examines the multiple levels and spaces where individuals raised and resolved constitutional questions regarding Bible reading in Ohio schools. It focuses on juristic consciousness, bench and bar, in trial and appellate spaces, as both personal belief and public performance. It concludes by sketching the long-term impact of *Minor* as determined by juristic, pedagogic, and popular consciousness. It reveals that bench and bar, pedagogues and public, conceived of the question of religious practices in public spaces within sacred frameworks that contained assumptions about the nature of religious liberty, a believer’s duties, and education. These frameworks determined the extent and shape of the presence of religion in legal forums and state schools. Thus, the frameworks setting the very boundaries of the sacred and secular were themselves religious. When Matthews and Welch argued for an end to Bible reading in the name of Christianity, they sacralized religious liberty by identifying its defense as a Christian duty.

This article builds upon critiques of secularization theory and examinations of the nature of disestablishment in the United States. While sociologists have largely discarded Weberian theory’s “secularization prophecies,”¹¹ a collection edited by Christian Smith traces American intellectuals who accomplished “the secular revolution” by using national

11. “Secularization R.I.P.,” in Roger Finke and Rodney Stark, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley: University of California Press, 2000), 57–79, at 58; for other challenges to secularization theory, see Paul Merkle, “Religion and the Political Prosperity of America,” *Canadian Journal of History* 26 (1991): 277–91; Roger Finke, “An Unsecular America,” in *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis*, ed. Steve Bruce (Oxford: Oxford University, 1992), 145–69; David B. Marshall, “Canadian Historians, Secularization and the Problem of the Nineteenth Century,” *Historical Studies* 60 (1993–1994): 57–81; José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994), 27–29; C.T. McIntire, “Secularization, Secular Religions, and Religious Pluralism in European and North American Societies,” *Fides et Historia* 30 (1998): 32–43; Hugh McLeod, *Secularisation in Western Europe, 1848–1914* (New York: St. Martin’s Press, 2000); and Jeffrey Cox, “Towards Eliminating the Concept of Secularization: A Progress Report,” in

organizations to eject orthodox Christianity from public life.¹² But these micro, meso, and macro levels of analysis do not easily overlay the decentralized system of American education, as Kevin Beyerlein's chapter on the National Education Association acknowledges.¹³ Smith writes that the Protestant elite minority failed to "ever" formulate "a cogent rationale for their influence in public life," yet their argument that religious faith was essential to producing the virtuous citizenry necessary to a republic is well documented.¹⁴ Public schools were crucial to this effort.¹⁵

By questioning "the secularist storyline" without embracing the opposing Christianization storyline, this article joins Leigh Eric Schmidt and others in the "uneasy space" of interdependency and negotiation between secular and religious.¹⁶ For gauging Protestantism's impact on juristic and popular consciousness, Sarah Barringer Gordon set the model by demonstrating how the nineteenth-century anti-polygamy campaign fused Christianity, republicanism, civilization, and monogamy.¹⁷ While that campaign shows the power of religion in civic forums, this article traces how religion framed its withdrawal from civic spaces.

Like scholars who identify intellectual links between nineteenth-century theology and legal science, this article recognizes how religion could frame

Secularization in the Christian World: Essays in Honour of Hugh McLeod, ed. C. Brown and M. Snape (Farnham: Ashgate, 2010), 13–26.

12. Christian Smith, ed. *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life* (Berkeley: University of California Press, 2003).

13. See Kraig Beyerlein, "Educational Elites and the Movement to Secularize Public Education: The Case of the National Educational Association," in *The Secular Revolution*, 160–96.

14. Smith, *The Secular Revolution*, 83.

15. James Fulton Maclear, "'The True American Union' of Church and State: The Reconstruction of the Theocratic Tradition," *Church History* 28 (1959): 41–62; David Tyack, "The Kingdom of God and the Common School: Protestant Ministers and the Educational Awakening in the West," *Harvard Educational Review* 36 (1966): 447–69; Daniel Walker Howe, "The Evangelical Movement and Political Culture in the North During the Second Party System," *Journal of American History* 77 (1991): 1216–39; Siobhan Moroney, "Birth of a Canon: The Historiography of Early Republican Educational Thought," *History of Education Quarterly* 39 (1999): 476–91; and David Russell Komline, *The Common School Awakening: Religion and the Transatlantic Roots of American Public Education* (New York: Oxford University Press, 2020).

16. Leigh Eric Schmidt, *Village Atheists: How America's Unbelievers Made Their Way in a Godly Nation* (Princeton: Princeton University Press, 2016), 19–21; R. Laurence Moore, *Selling God: American Religion in the Marketplace of Culture* (New York: Oxford University Press, 1994), 7–8; and Monica Najjar, *Evangelizing the South: A Social History of Church and State in Early America* (New York: Oxford University Press, 2008).

17. Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 2002).

law. A foundational belief of Scottish Common Sense Realism underlay both theology and law in nineteenth-century America: God endowed the human soul with a moral faculty able to distinguish right from wrong.¹⁸ Jurists explained that human law should thus strive to reflect divine law.¹⁹ So, Stanley Matthews ended a bar association speech in 1888 quoting Richard Hooker, the Anglican theologian who authored an eight-volume set on laws in the 1590s: “Of law, there can be no less acknowledged than that her seat is the bosom of God...”²⁰ A fellow lawyer recalled that Matthews “traced” law to “its source fountain, not in Blackstone or Kent or Coke’s Institutes, or in those of Justinian, but, in and through all these, back to the mind of God.”²¹ Such ideas account for architectonic, normative, and linguistic transfers from religion to Anglo-American law, such as the equation of sin with crime.²² Discursive conventions limited religious expression in judicial reasoning, but jurists articulated their foundational religious beliefs when pressed.²³

Like studies of Christian founders decentering deist Thomas Jefferson and his Virginia, this article draws attention to a Christian lawyer’s vision

18. D. H. Meyer, *The Instructed Conscience: The Shaping of the American National Ethic* (Philadelphia: University of Pennsylvania Press, 1972); and Mark A. Noll, “Common Sense Traditions and American Evangelical Thought,” *American Quarterly* 37 (1985): 216–38. On links between early western law and religion, see the works of Harold J. Berman.

19. William P. LaPiana, “*Swift v. Tyson* and the Brooding Omnipresence in the Sky: An Investigation of the Idea of Law in Antebellum America,” *Suffolk University Law Review* 20 (1986): 771–832; R. Kent Newmeyer, “Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence,” *Journal of American History* 74 (1987): 814–35; Howard Schwebel, “The ‘Science’ of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education,” *Law and History Review* 17 (1999): 421–66; Mark Warren Bailey, “Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science,” *Journal of Legal Education* 48 (1998): 311–28; Peter Charles Hoffer, “Principled Discretion: Concealment, Conscience, and Chancellors,” *Yale Journal of Law & the Humanities* 3 (1991): 53–82; Linda Przybyszewski, *The Republic According to John Marshall Harlan* (Chapel Hill: University of North Carolina Press, 1999), 52–58; and Susanna L. Blumenthal, “The Mind of a Moral Agent: Scottish Common Sense and the Problem of Responsibility in Nineteenth-Century American Law,” *Law and History Review* 26 (2008): 99–159.

20. Stanley Matthews, *The Function of the Legal Profession in the Progress of Civilization* (Cincinnati: R. Clarke, 1881), 37.

21. “Meeting of the Cincinnati Bar,” *Weekly Law Bulletin* 21 (1889): 187–91, at 190.

22. Raymond G. Decker, “The Secularization of Anglo-American Law: 1800–1970,” *Thought* 49 (1974): 280–98; Mark Hill, Norman Doe, R.H. Helmholz, and John Witte, Jr., eds., *Christianity and Criminal Law* (Abingdon, Oxon: Routledge, Taylor & Francis Group, 2020).

23. Linda Przybyszewski, “Judicial Conservatism and Protestant Faith: The Case of Justice David J. Brewer,” *Journal of American History* 91 (2004): 471–96.

of religious liberty.²⁴ The Danbury Baptists who prompted Jefferson's 1801 metaphor on the First Amendment as a "wall of separation between Church and State" did not want "religious influences separated from public life and policy," writes Daniel L. Dreisbach.²⁵ And they were hardly alone.²⁶ Scholars have identified the impact of Protestantism, and its fears of Catholics, in state regulation of church wealth and clerical authority into the early twentieth century.²⁷ They have shown how Native Americans and others gained religious liberty protections only by demonstrating commonalities with mainstream Christian churches.²⁸ Evangelical belief influenced culture, politics, and law in the nineteenth century, thus creating de facto Protestant establishment into the 1920s.²⁹

Many American Protestants identified the Reformation's "free" Bible as the font of modern civil and religious liberties—invariably coupled—as against Catholic tyranny, thus linking pan-Protestant influence over government with religious liberty guarantees.³⁰ The myth was that popes

24. Daniel L. Dreisbach, Mark David Hall, and Jeffry H. Morrison, eds., *The Forgotten Founders on Religion and Public Life* (Notre Dame: University of Notre Dame Press, 2009); Carl H. Esbeck and Jonathan J. Den Hartog, eds., *Disestablishment and Religious Dissent: Church-State Relations in the New American States, 1776–1833* (Columbia: University of Missouri Press, 2019); and Daniel L. Dreisbach, "A New Perspective on Jefferson's Views on Church-State Relations: The Virginia Statute for Establishing Religious Freedom in its Legislative Context," *American Journal of Legal History* 35 (1991): 172–204.

25. Daniel L. Dreisbach, *Thomas Jefferson and the Wall of Separation Between Church and State* (New York: New York University Press, 2002), 51.

26. Gary J. Dorrien, *The Making of American Liberal Theology: Imagining Progressive Religion, 1805–1900* (Louisville, KY: Westminster John Knox Press, 2001), 119, 127–128; and Linda Przybyszewski, *Religion, Morality, and the Constitutional Order* (Washington, DC: American Historical Association and the Institute for Constitutional History, 2011).

27. Sarah Barringer Gordon, "The First Disestablishment: Limits on Church Power and Property Before the Civil War," *University of Pennsylvania Law Review* 162 (2014): 307–72; and Thomas E. Buckley, "'A Great Religious Octopus': Church and State at Virginia's Constitutional Convention, 1901–1902," *Church History* 72 (2003): 333–60.

28. Tisa Wenger, *We Have A Religion: The 1920s Pueblo Indian Dance Controversy* (Chapel Hill: University of North Carolina, 2009) and *American Religious Freedom: The Contested History of an American* (Chapel Hill: University of North Carolina, 2017).

29. Elwyn A. Smith, ed., *The Religion of the Republic* (Philadelphia: Fortress Press, 1971); Robert T. Handy, *A Christian America: Protestant Hopes and Historical Realities* (New York: Oxford University Press, 1971, revised edn. 1984) and *Undermined Establishment: Church-State Relations in America, 1880–1920* (Princeton: Princeton University Press, 1991); similarly, see Sehat, *The Myth of American Religious Freedom*. Others set the date earlier: Daniel R. Ernst, "Church-State Issues and the Law: 1607–1870," in *Church and State in America*, 331–64.

30. Jon Gjerde and S. Deborah Kang, *Catholicism and the Shaping of Nineteenth-Century America* (New York: Cambridge University Press, 2012), 20ff.

banned Bible reading and all independent thinking.³¹ The King James Version, without note or commentary, embodied the right of private judgment; that is, that each reader interprets God's Word independently, and that version dominated the American market.³² (The Catholic Church held that untutored readers needed the expert commentary provided in the Douai-Rheims Bible.)³³ Protestantism's motto was *sola scriptura*, the Bible alone, although few encountered scripture solo, as Protestant churches imposed interpretive rules through sermons, a rich print culture, and heresy trials.³⁴ Still, American Protestants envisioned history as the onward march of their peculiarly republican faith, rendering anti-Catholicism into republican patriotism.³⁵ "Religion was more than a purely personal concern. It stood guard over liberty," writes one historian.³⁶

But if Protestantism produced religious liberty and Catholicism produced tyranny, how much religious pluralism could the Republic tolerate? It did not help that the Vatican idealized a church–state union, although its early Irish-American clergy did not.³⁷ Anti-Catholic accusations proliferated: priests chained the Bible, controlled male voters, seduced women, divided families; the faith discouraged all free thought and economic

31. Hartmut Lehmann, "Anti-Catholic and Protestant Propaganda in Mid-Nineteenth-Century America and Europe," *Pietismus und Neuzeit* 17 (1991): 121–34; Linda Przybyszewski, "Fighting the Philistines: Bishop John Purcell, The Catholic Disruption, and the Making of Memory," *U.S. Catholic Historian* 38 (2020): 99–124; Philip Hamburger emphasizes anti-Catholicism as the source of nineteenth-century separation impulses, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002).

32. Gutjahr, *An American Bible*, 29ff; and Ray Allen Billington, *The Protestant Crusade, 1800–1860* (New York: Macmillan, 1938), 42–43.

33. Gerald P. Fogarty, "The Quest for a Catholic Vernacular Bible in America," in *The Bible in America*, ed. Nathan O. Hatch and Mark A. Noll (New York: Oxford University Press, 1982), 163–80.

34. Herbert F. Hahn, "The Reformation and Bible Criticism," *Journal of Bible and Religion* 21 (1953): 257–61; and Candy Gunther Brown, *The Word in the World: Evangelical Writing, Publishing, and Reading in America, 1789–1880* (Chapel Hill: University of North Carolina Press, 2004).

35. Fred J. Hood, *Reformed America: The Middle and Southern States 1783–1837* (Tuscaloosa: University of Alabama Press, 1980), 48–67; and Maura Jane Farrelly, *Anti-Catholicism in America, 1620–1860* (Cambridge: Cambridge University Press, 2017).

36. Smith, "The Voluntary Establishment of Religion," in *The Religion of the Republic*, 154–182, 174.

37. On clerical opposition to *Mirari Vos*, see Anthony H. Deye, "Archbishop John Baptist Purcell of Cincinnati: Pre-Civil War Years" (PhD diss., University of Notre Dame, 1959), 160; and Patrick Carey, *An Immigrant Bishop: John England's Adaptation of Irish Catholicism to American Republicanism* (Yonkers: U.S. Catholic Historical Society, 1982), 89–90, 95–96.

initiative.³⁸ Antebellum discussions of American religious nationalism reached violent climaxes in the 1830s and 1840s over schooling.³⁹ Irish immigration intensified fears and encouraged the American Party or Know-Nothings in the 1850s. The Bible War re-inflamed these fears and is identified as one of the reasons that President Ulysses S. Grant favored legal bars on state funding for sectarian education, an anti-Catholic measure.⁴⁰

Stanley Matthews's brief in the Bible War case was more eschatologically Protestant than anti-Catholic. The leader of the "anti-Bible" legal team and a future United States Supreme Court justice, Matthews identified the pope with tyranny and disapproved of the infamous *Mortara* case (1858) when the Papal States seized a Jewish child (his brief also used a quotation that referenced the "monstrous fables" of the Talmud and the "gross impostures" of the Koran).⁴¹ Yet Matthews's portrayal of lay Catholics was respectful and sympathetic, if ultimately instrumentalist: Matthews championed religious liberty in the hope that the unconverted might be saved as he had been.

Like other religious critics of de facto Protestant establishment, Matthews drew on Christian dissenting tradition.⁴² While colonial Puritans had remained linked to the Anglican Church, radical separationists rejected a state church that incorporated all inhabitants regardless of their spiritual condition. So, Roger Williams argued that state magistrates

38. The classic work is Billington, *The Protestant Crusade*; see also David Brion Davis, "Some Themes of Counter-Subversion: An Analysis of Anti-Masonic, Anti-Catholic, and Anti-Mormon Literature," *Mississippi Valley Historical Review* 47 (1960): 205–24; Jenny Franchot stresses the attraction and repulsion of Catholicism for northeastern intellectuals, in *Roads to Rome: The Antebellum Protestant Encounter with Catholicism* (Berkeley: University of California Press, 1994); Tracy Fessenden, *Culture and Redemption: Religion, the Secular, and American Literature* (Princeton: Princeton University Press, 2007).

39. John T. McGreevy, *Catholicism and American Freedom* (New York: W.W. Norton, 2003), 1–42; Nancy Lusignan Schultz, *Fire & Roses: The Burning of the Charleston Convent, 1834* (New York: Free Press, 2000); and Vincent P. Lannie and Bernard C. Diethorn, "For the Honor and Glory of God: The Philadelphia Bible Riots of 1840," *History of Education Quarterly* 8 (1968): 44–106.

40. Ward M. McAfee compares *culturkampf* in Germany to the Republican Party's anti-Catholic efforts in the 1870s, but Ohio barred state aid to sectarian schools in its 1851 constitution, *Religion, Race and Reconstruction: The Public School in the Politics of the 1870s* (Albany: State University of New York Press, 1998).

41. "Argument of Stanley Matthews," *The Bible in the Public Schools. Arguments in the Case of John D. Minor et al. Versus the Board of Education of the City of Cincinnati et al, Superior Court of Cincinnati. With the Opinions and Decisions of the Court* (Cincinnati: Robert Clarke & Co., 1870), 280, 246, 278; see Bertram Wallace Korn, *The American Reaction to the Mortara Case: 1858–1859* (Cincinnati: American Jewish Archives, 1957).

42. In addition to those cited here, see the work of Merrill D. Peterson, Robert C. Vaughan, Mark DeWolfe Howe, and Thomas J. Curry.

were unlikely to be Christians able to distinguish true servants of God, and that no true Christian would use force to impose faith.⁴³ Nineteenth-century Baptists and others relied on this tradition in writing petitions opposing Sabbath laws, temperance, and religious training in the public schools as being violations of religious liberty.⁴⁴ Matthews supported Sabbath and temperance laws, yet he held that the sullied state must not teach religion in the schools.⁴⁵ “Protestants have no rights” that do not also belong to Catholics and “Jews and Infidels too,” he declared in court, because he believed that only the (Protestant) churches, not the state, could bring the Word of God to all and hasten the millennium.⁴⁶ Matthews’s invocations of regeneration and the Second Coming were distinctly Protestant practices. By sacralizing religious liberty within a post-millennialist framework, Matthews gave Justice Welch, himself a religious radical, a respectable (although not universally accepted) Christian argument for ending Bible reading. The resulting decision hybridized dissenting and deistic reasoning, appealing to as broad a constituency as had the right to elect Ohio’s justices. *Minor* offered a means of ending Bible reading with the blessing of Christianity.

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Born in 1824, son of a deist who taught mathematics and natural philosophy, Thomas Stanley Matthews originally followed Universalism, a faith that sometimes disqualified its followers from testifying in court.⁴⁷ Universalists believed—as Salmon P. Chase teased Matthews—“that earth’s devils and earth’s devil’s victims are going to the same place hereafter.”⁴⁸ Matthews became a Free-Soil Democrat and worked with Chase

43. Edmund S. Morgan, *Roger Williams: The Church and the State* (New York: Harcourt, Brace, and World, 1967).

44. Timothy Verhoeven, *Secularists, Religion and Government in Nineteenth-Century America* (Cham, Switzerland: Palgrave Macmillan, 2019).

45. “The Civil Sabbath,” *Presbyter*, March 10, 1869, 4; and “Temperance. Another Day of Preparation. . .,” *Cincinnati Daily Gazette*, March 24, 1874, 8.

46. “Argument of Stanley Matthews,” 227.

47. Ronald P. Formisano and Stephen Pickering, “The Christian Nation Debate and Witness Competency,” *Journal of the Early Republic* 29 (2009): 219–48; and Jud Campbell, “Testimonial Exclusions and Religious Freedom in Early America,” *Law and History Review* 39 (2019): 431–92.

48. Annie A. Nunns, “Letters of Salmon P. Chase 1848–1865,” *American Historical Review* 34 (1929): 536–55, at 544; see also, Mrs. Harland Cleveland, *Mother Eva Mary, C.T. The Story of a Foundation* (Milwaukee: Morehouse Pub. Co, 1929), 12; “Remarks of George Hoadly” *Proceedings of the Bench and Bar of the Supreme Court of the United States: In Memoriam Stanley Matthews* (Washington, DC: Government Printing Office, 1889), 10–15, at 13; on Universalism and its theological critics, see E. Brooks Holifield, *Theology in America: Christian Thought from the Age of the Puritans to the Civil War* (New Haven, CT: Yale University Press, 2003), 218–33.

against the Ohio Black Codes, yet he criticized judges who refused to uphold the Fugitive Slave Law of 1850.⁴⁹ He served as an Ohio Court of Common Pleas judge and state senator during these years. He and his wife, Mary Ann Black, considered joining both a utopian socialist Fourier community and Brook Farm, the transcendental experiment.⁵⁰ Matthews was as religiously radical as an antebellum American could be.

But when scarlet fever killed four of his children in 1859, Matthews found solace in the God of Calvinism.⁵¹ His personal correspondence exhibits an intense reliance on God's power from 1859, reinforced by service in the Union Army from 1861 to 1863, ebbing in fervor in the late 1870s, yet never disappearing.⁵² Matthews and Mary Ann joined an Old School Presbyterian church, a significant step requiring a public confession of faith, an external marker of an internal process, emphasizing the power of God and the limits of human reason.⁵³ After his military service, Matthews won election to the Cincinnati Superior Court.⁵⁴ While Old School Presbyterians tended to accept slavery, their General Assembly adopted the anti-slavery "Stanley Matthews paper" in 1864, when he also supported President Lincoln's re-election.⁵⁵ Matthews was a

49. See John Niven, *Salmon P. Chase: A Biography* (New York: Oxford University Press, 1995), 90–108. Matthews was a delegate at two Democratic presidential conventions, "Terrible Shipwreck Chicago Convention" *Cincinnati Daily Enquirer*, June 18, 1847, 2; and "REGULAR DISPATCHES: From Washington," *Cincinnati Daily Enquirer*, July 8, 1860, 3. On the Fugitive Slave law, see "The Findlay Market Meeting LAST NIGHT..." *Cincinnati Daily Enquirer*, October 4, 1860, 2.

50. See William R. Wantland. "Jurist and Advocate: the Political Career of Stanley Matthews, 1840–1889" (PhD diss., Miami University, 1994), 56–62. Americans reworked Fourierism; see Carl J. Guameri, "Importing Fourierism to America," *Journal of the History of Ideas* 43 (1982): 581–94; and Carl J. Guameri, *The Utopian Alternative Fourierism in Nineteenth-Century America* (Ithaca, NY: Cornell University Press, 1991). Both Stanley and Mary Ann Matthews signed a Brook Farm circular, Cleveland, *Mother Eva Mary*, 12.

51. See Linda Przybyszewski, "Scarlet Fever, Stanley Matthews, and the Cincinnati Bible War," *Journal of Supreme Court History* 42 (2017): 256–74.

52. See Stanley Matthews Collection, Hayes Presidential Library, Spiegel Grove, Fremont, Ohio.

53. Charles D. Cashdollar, *A Spiritual Home: Life in British and American Reformed Congregations, 1830–1915* (University Park: Pennsylvania State University Press, 2000), 101–9. See Holifield, *Theology in America*, 370ff. Old School Presbyterianism in the nineteenth century was the Presbyterian Church in the United States of America.

54. Rutherford B. Hayes and Charles Richard Williams, *Diary and Letters of Rutherford Birchard Hayes* 2 (Columbus: Ohio State Archaeological and Historical Society, 1922–26), 401, 404.

55. See Irving Stoddard Kull, "Presbyterian Attitudes toward Slavery," *Church History* 7 (1938): 101–14; *Minutes of the General Assembly of the Presbyterian Church in the United States of America* XVII (1864), 296–99; "The Lincoln Convention Yesterday..." *Cincinnati Daily Enquirer*, August 8, 1864, 3.

successful, politically connected, local attorney known for his orthodox piety by 1869.

Which is precisely why the school board enlisted him: he lent religious respectability to an “anti-Bible” enterprise.⁵⁶ Indeed, George Hoadly, his co-counsel, a Unitarian, urged that he be hired because of “his Christianity, ardent, devoted, springing from the full conviction of a man of high mental powers. . . .”⁵⁷ John Stallo, a German immigrant and a Catholic turned Hegelian, joined them. In contrast, the pro-Bible team had impeccable orthodox credentials—a Methodist and the son of a minister, a Congregationalist, and an Episcopalian.

Each day of the hearing saw “the same crowded room, the same indifference to physical discomfort, the same intense interest” according to extensive newspaper coverage.⁵⁸ Newspaper accounts shifted between verbatim and descriptive passages, so this article relies upon the published briefs. The attorneys reviewed them, editing some passages smooth, adding footnotes, and lengthening quotations, but the text captures their oral arguments, and the courtroom exchanges and public reactions. They offer an extraordinary extended legal commentary on the role of religion in the schools, and have either been neglected by scholars or quoted misleadingly.⁵⁹

Matthews and his two co-counsel relied on the same two central legal arguments. Following both Ohio precedent and Thomas Cooley’s *Constitutional Limitations* from 1868, they agreed that Christianity was not part of the common law inherited from England, nor was it part of Ohio’s common law. They agreed that opening the school day with a Bible reading constituted Protestant worship in violation the Ohio Constitution’s religious liberty clause. Their arguments diverged from there because of their individual religious beliefs.

Matthews’s “apparently inconsistent attitude” drew particular press interest.⁶⁰ His argument was “a remarkable one, not only for its great ability,” wrote one newspaper, but because he argued against the Bible as “a devout

56. “Secularization of the Schools: Mass Meeting of the Anti-Bibleists . . .” *Cincinnati Daily Enquirer*, March 31, 1870, 4.

57. “Remarks of George Hoadly,” 14. Cincinnati’s Unitarians divided over Bible reading.

58. “Court Reports: The Bible in the Schools. . . Conclusion of Judge Matthews’ Argument,” *Cincinnati Daily Gazette*, December 3, 1869, 1.

59. Selective excerpts can be used to support any given position on education, see Lawrence Moore, “Bible Reading and Nonsectarian Schooling: The Failure of Religious Instruction in Nineteenth-Century Public Education,” *Journal of American History* 86 (2000): 1581–99, at 1594–95.

60. “Court Reports: The Bible in the Schools. . . Conclusion of Judge Matthews’ Argument,” *Cincinnati Daily Gazette*, December 3, 1869, 1.

believer and a zealous Christian.”⁶¹ Forced to resign his elected position as church elder, Matthews found himself in “the most painful experience” of his life save for his children’s deaths, as he told the court.⁶² He felt compelled to argue the Bible War case because of “a religion which it is the greatest honor and pride of my life to be able to-day to stand in public and confess.”⁶³ This legal work answered his own earlier call at a Presbyterian convention that year: secular business, too often an excuse for avoiding church work, offered “the very opportunities. . .to give evidence to the world at large that we are living Christians.”⁶⁴ Conversion carried with it the duty to evangelize. Matthews’s former law partner recalled: “He regarded his calling as a ministry—exalted high above all money consideration.”⁶⁵

For Matthews, civic, professional, and religious duty compelled his controversial work. He had “no choice,” he explained in court. “As a lover of my profession,” he meant to stop an illegal act. As a citizen, he was determined to defend the public schools and the state from “dangerous and mischievous” doctrines. And as a Christian, he was determined to stop the Bible from being “bandied about as a foot-ball between political parties.” For Matthews, the mixing of politics and religion “ought not to be. Legitimately it can not be.” Lawyers and judges had “no business” arguing about religion in court, for they were incompetent to answer “questions of exegesis, questions of interpretation, questions of church authority, questions of inspiration.”⁶⁶ And yet Matthews relied in court upon exegesis, interpretation, church authority, and even inspiration.

The most heartfelt example came when Matthews identified himself as “a Calvinistic Protestant” in the midst of his exposition on why Bible reading in schools constituted an act of worship. Matthews confessed his belief in the Bible as the Word of God and Jesus Christ as the Messiah and ended with a quotation from the Gospel of John: “Behold the Lamb of God which taketh away the sins of the world!” He then called on his dead children to witness to his faith: “I have not three witnesses only, if your Honors please, above. I have five—five witnesses in heaven to-day. . . .”⁶⁷ The fifth was his eldest daughter who had died suddenly in 1868.⁶⁸ Why then start with three? Because Deuteronomy reads: “One witness shall not rise up against a man for

61. “The Bible Trial,” *Cincinnati Daily Gazette*, December 3, 1869, 2.

62. “Argument of Stanley Matthews,” 207.

63. *Ibid.*, 208.

64. “Presbyterian Convention. . .” *Cincinnati Daily Gazette*, February 18, 1869, 1.

65. “Meeting of the Cincinnati Bar,” 190.

66. “Argument of Stanley Matthews,” 207–9.

67. “Argument of Stanley Matthews,” 228–29; and John 1:29.

68. R. B. Hayes to William Henry Smith, November 3, 1868 in Hayes and Williams, *Diary and Letters* 3, 55.

any inequity. . . . At the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.”⁶⁹ Matthews’s listeners, especially his critics, would have appreciated the allusion, because Protestant church trials noted this rule.⁷⁰ Witnessing was a particularly powerful idea for Christians, meaning truth-telling and a public profession of faith.⁷¹

Matthews’s brief drew upon the argument made by earlier Christian dissenters who were crucial to ending religious establishments in the eighteenth century. A Presbyterian petition for the end of Anglican establishment in Virginia in 1776 reasoned that “when our Blessed Saviour declared *his kingdom is not of this world*,” when answering Pontius Pilate, the Roman official, “he renounced all dependence upon State Power”⁷² (all emphases in originals). Matthews invoked the same Bible passage from the Gospel of John to argue that Ohio and its teachers could not identify religious truth. He warned the “civil authorities” to desist, lest they err as Pilate had, and “crucify the Lord of Glory afresh!” Do not “toss” the Bible into “the arena of political controversy,” lest they violate Christ’s command: “*Give not that which is holy unto the dogs, neither cast ye your pearls before swine, lest they trample them under their feet, and turn again and rend you.*” After another confession of faith, this one made by quoting the First Letter of Paul to Timothy, Matthews explained, “the State, the civil power—through its law-making, judicial and executive administration; through its politics and its parties; through its secular agents and officers; through its boards of education and school teachers has, rightfully, and can have, nothing whatever to do” with religion. He quoted from a pagan source, Virgil’s *Aeneid*, “*Procul, procul este profani!*” and then warned, “Let no unholy hands be laid upon the sacred ark.” Listeners would have recognized the allusion to the Second Book of Samuel where the Ark of the Covenant holding the tablets of the Ten Commandments was drawn along by oxen when the unworthy Uzzah “put forth his hand” to steady it. The text reads: “God smote him there for his error; and he died by the ark of God.”⁷³ Well-meaning men were not spared God’s wrath.

69. Deuteronomy 19:15.

70. See *The Form of Government and Forms of Process of the Presbyterian Church in the United States of America* (Philadelphia: Perkins and Purves, 1845), 364–65, note “o.”

71. Francois Durrwell, “Christian Witness: A Theological Study,” *International Review of Mission* 69 (1980): 121–34.

72. Quoted in John A. Ragosta, “Fighting for Freedom: Virginia Dissenter’ Struggle for Religious Liberty during the American Revolution,” *The Virginia Magazine of History and Biography* 116 (2008): 226–61, at 251.

73. “Argument of Stanley Matthews,” 282, quoting Matthew 7:6, 257; Second Book of Samuel 6:6–7.

To limit state power, Matthews also invoked his denomination's Westminster Confession at length. "Civil magistrates may not assume to themselves the administration of the word and sacraments, or the power of the keys of the kingdom of heaven, or in the least interfere in the matters of faith..." While the original 1647 Confession required magistrates to suppress "all blasphemies and heresies," Matthews quoted the revision made by Americans in 1788: "it is the duty of civil magistrates to protect the church of our common Lord without giving the preference to any denomination of Christians above the rest, ... all ecclesiastical persons whatever shall enjoy the full, free and unquestioned liberty of discharging every part of their sacred functions, without violence or danger."⁷⁴ Biblical and creedal sources dotted Matthews's brief because post-millennialism framed his legal arguments.

Extending religious liberty to the unconverted was a mode of loving evangelism for Matthews. "In the spirit of my Divine Master," Jesus Christ, "I do not want to compel any man," he told the court. As a man "treasures" his own conscience, so he should "apply the cardinal maxim of Christian life and practice, 'Whatsoever ye would that men should do unto you, do ye even so unto them.'" Christ's Golden Rule from the Gospel of Matthew found its parallel in the guarantee of religious liberty in the Ohio Constitution. Jews were "equally entitled" to "civil and religious equality, equality because it is right, and a right," right in God's eyes and a right under Ohio law. So too Catholics have "civil rights and religious rights, equal to yours and mine." Defending such rights aided conversion. "I know no better way, to recommend the truth" of the Bible "to those who can not receive it," Matthews told the court, "but to live like him whose teaching is to be just, to be good, to be kind, to be charitable, to receive them all into the arms of my human sympathy, and to say to them, 'Sacred as I believe that truth to be, just so sacred is your right to judge it.'" Matthews then turned back to "the civil law" and asked what could it do "in the presence of eternity and of these eternal truths, and of these distinctions and differences, and human weaknesses and disabilities?" Can civil law force the majority faith of Protestantism upon the non-believer by saying to them, "you shall be daily confronted with what you do not and can not receive?"⁷⁵ Matthews relied upon the distinctive language of the King James Bible in which the believer "receives"; that is,

74. "Argument of Stanley Matthews," 271, quoting Westminster Confession of Faith (1788), ch. xxiii, sect. 3; see comparison of confessions, Philip Schaff, *Church And State In the United States* (New York: G.P. Putnam's Sons, 1888), 50. On John Witherspoon's ideas on private judgment as part of this shift, see Nicholas Patrick Miller, *The Religious Roots of the First Amendment* (New York: Oxford University Press, 2012), 133 ff.

75. "Argument of Stanley Matthews," 229, 221, 223, 229–30.

accepts, Christ as the Son of God. The non-believer here was the not-yet-converted Protestant, an assumption that had shaped the earliest American Protestant efforts to convert with Christian love the Catholics who lived in what was then the West.⁷⁶

Like other Protestants, Matthews believed that his faith produced religious liberty. Protestants were a “fighting people” of a faith “born and baptized in blood” who would rather die “than surrender the right of private judgment.” Matthews identified a counterpart to that right in constitutional law. “All I ask is—being a Protestant—that we make manifest the value of our Protestantism to those we seek to convert,” he explained, “by showing what it can do for a man by making him magnanimous, and liberal, and great. Oh, what a solemn mission it is to which your Honors are called—to vindicate the truth of the religion you privately profess by showing how equal, how just it is!”⁷⁷ The possibility of universal regeneration through loving evangelism may have had special resonance for a man who experienced such a dramatic conversion. Matthews’s appeal was to judges of varying faiths: Bellamy Storer, an Episcopalian, Marcellus B. Hagens, a Methodist Episcopalian, and Alphonso Taft, a Unitarian.⁷⁸

Matthews’s approach to Catholics was sympathetic and imaginative if ultimately instrumentalist. He countered directly the caricature of Catholics as slaves to an unrepugnant faith. Catholicism was “not an ignorant superstition;” “well constructed logic” undergirded its “doctrinal basis.” Catholics believed “sincerely, conscientiously,” and voluntarily.⁷⁹ After Judge Storer insisted that the archbishop would reject Bible-less public schools as godless, rendering the school board’s move bootless, Matthews’s imagined lay Catholics challenging “the hierarchy.” They would greet the “destruction” of parish schools with “approbation,” and “great relief.” After Bible readings ended, they could correct priests: “Father, you are mistaken; our children are unmolested” in public schools.⁸⁰ (Matthews was prescient; Catholic lay resistance, always lively

76. Gjerde and Kang, *Catholicism and the Shaping of Nineteenth Century America*, 112–32.

77. “Argument of Stanley Matthews,” 234–35.

78. “Centennial Anniversary Of Methodism. Celebration of the Sunday Schools,” *Cincinnati Daily Gazette*, November 12, 1866, 1; “Hagens, Marcellus B.,” *The Biographical Cyclopaedia and Portrait Gallery, with an Historical Sketch of the State of Ohio* IV (Cincinnati: Western Biographical Pub. Co, 1891), 928; Linda C. A. Przybyszewski, “Taft, Alphonso,” *American National Biography*, <http://www.anb.org/view/10.1093/anb/9780198606697.001.0001/anb-9780198606697-e-1100832> (July 17, 2021).

79. “Argument of Stanley Matthews,” 222–23.

80. “Argument of Stanley Matthews,” 231–34, see also “Secularization of the Schools: Mass Meeting of the Anti-Bibleists . . .” *Cincinnati Daily Enquirer*, March 31, 1870, 4.

in the nineteenth century, prompted the American bishops to require parents to use parish schools in 1884.)⁸¹ Matthews invited the court to imagine the spiritual distress of Catholics under the current regime: “Suppose Catholics were the majority and “suppose your children” were forced to make the sign of the cross, “How would your Honors like it?”⁸² Doing unto others in the civil sphere left everyone safer, even as eschatology made religious liberty into a means, not an end, for Matthews.

By pairing the Protestant belief that a soul could achieve spiritual grace only by freely accepting Jesus Christ as Savior with the constitutional guarantee of religious liberty, Matthews aided the ultimate Christian event: the Second Coming of Jesus Christ.⁸³ Near the end of his argument, Matthews reminded the judges of Reverend Lyman Beecher’s joyful discovery that disestablishment in Connecticut in 1818 brought unprecedented evangelization by throwing believers “on God and on ourselves.”⁸⁴ Was it true, as the pro-Bible side argued, that thousands of children in Cincinnati had never learned of Christianity? In rhetorical questions studded with Biblical quotations, Matthews continued for some three pages of text: Did not Jesus command us to go out into the streets and “bring them into the feast which he had prepared?” Had “the Church grown “idle and lazy?” “No!” cried Matthews. The church must “say to the State: ‘hands off; it is our business, it is our duty, it is our privilege to educate the children in religion and the true knowledge of godliness.’” Bible advocates would settle for teaching children mere morality: “Be virtuous and you shall be happy.” But the church would teach the truth: “Believe on the Lord Jesus Christ and thou shalt be saved.”⁸⁵ Matthews cried out for evangelism from the church: “Let her rise up in the full measure and majesty of her innate spiritual strength—let her gird her loins for the mighty task. . . .” The inevitable result of universal regeneration was the Second Coming, an event often identified with the Republic, and Matthews quoted at length from Revelation: “Then shall be hastened the promised time of the coming of our King when there shall be a new heaven and a new earth. . . .” The church must “throw away the sword of civil authority,” he concluded, for only then could she “restore upon earth the Paradise

81. Patrick W. Carey, *People, Priests, and Prelates: Ecclesiastical Democracy and the Tensions of Trusteeism* (Notre Dame, IN: University of Notre Dame Press, 1987); and Philip Gleason, “Baltimore III and Education,” *U.S. Catholic Historian* 4 (1985): 273–306.

82. “Argument of Stanley Matthews,” 234.

83. Hood, *Reformed America*, 70–78.

84. Quoted in “Argument of Stanley Matthews,” 284.

85. “Argument of Stanley Matthews,” 284, quoting Matthew 22:4; 285, quoting Acts 16:31.

of God.”⁸⁶ To Matthews, encouraging conversion remained as important as the pan-Protestant organizational efforts to which other evangelicals now devoted more energy.⁸⁷

The evangelizing framework of Matthew’s legal argument accounts for his approval, despite Catholic objections, of Protestant worship when the state acted *in loco parentis*.⁸⁸ Matthews denounced the state effort to try to convert Catholic children from “their fathers’ faith,” yet dismissed state institutions as irrelevant to the legal issues in *Minor*.⁸⁹ As a trustee of the state reform school where boys lived in “families” supervised by “elder brothers,” Matthews praised the school’s Gospel lessons and use of a Protestant hymnal.⁹⁰ Nonsectarian Protestantism was still a civic, and metaphorically familial, value. (Justice Welch agreed: the state may direct “what religious instruction” is given when it “takes the place of the parent.”)⁹¹

Despite Matthews’s appeal to Protestant heritage, the Cincinnati Superior Court ruled against the school board in February of 1870. Judges Storer and Hagans held the board could not end Bible reading on two grounds: the state constitution’s religion, morality, and knowledge clause required religious instruction in the schools; and reading the King James Bible was a non-sectarian practice that did not violate the constitution’s religious liberty clause. Echoing Matthews, Judge Taft quoted Christ’s Golden Rule in his dissent, and argued that “the State, while it does not profess to be Christian, exercises a truly Christian charity toward all.” Taft stopped just short of defending the conscience of “a Rationalist, or a Spiritualist or even an Atheist.”⁹²

86. “Argument of Stanley Matthews,” 285–87; Revelation 21:2. See J. F. Maclear, “The Republic and the Millennium,” in *The Religion of the Republic*, 183–216; and Ernest Lee Tuveson, *Redeemer Nation; the Idea of America’s Millennial Role* (Chicago: University of Chicago Press, 1968).

87. Sidney Mead, *The Lively Experiment: The Shaping of Christianity in America* (New York: Harpers & Row, 1963), 115–21. Matthews supported pan-Protestant organizations; see “The Civil Sabbath.”

88. “School at Childrens’ Home,” *Catholic Telegraph*, September 8, 1869, 4; and “The School at the Childrens’ Home,” *Catholic Telegraph*, August 11, 1869, 4.

89. “Argument of Stanley Matthews,” 234, 237.

90. “Argument of George R. Sage,” *The Bible in the Public Schools. Arguments in the Case of John D. Minor et al. Versus the Board of Education of the City of Cincinnati et al, Superior Court of Cincinnati. With the Opinions and Decisions of the Court* (Cincinnati: Robert Clarke & Co., 1870), 198–99; and “Home News. Reform School For Boys At Lancaster,” *Cincinnati Daily Gazette*, June 11, 1869, 2.

91. *Board of Education v. Minor*, 23 Ohio St. 211. 253 (1872).

92. “Opinion of Judge Taft,” *The Bible in the Public Schools. Arguments in the Case of John D. Minor et al. Versus the Board of Education of the City of Cincinnati et al, Superior*

John Welch, who wrote the unanimous Ohio opinion in favor of the school board, attended a Presbyterian college, divided the world easily into “christendom” and “heathendom,” and yet called himself an “Emersonian.”⁹³ Progress meant religion becoming “more rational and tolerant, and less ritual and dogmatic.”⁹⁴ He was remembered as a man who “was not a member of any church, because he did not accept churchmen’s theories, and he could not be a hypocrite.”⁹⁵ Such liberal Protestants had few if any doctrinal requirements, but rather an ethical imperative that facilitated extending religious liberties to others.⁹⁶ Appointed to the Ohio Supreme Court in 1865, and serving until 1878, Welch was re-elected three times. Clearly, ruling in favor of the school board did not hamper his re-election, perhaps because of his blending of justifications for religious liberty.

Welch denied the common Protestant equation of religion with Christianity all the while relying on the Christian dissenter’s anti-compulsion argument used by Matthews. The state constitution encouraged “religion,” not “the Christian religion,” Welch wrote, just as it protected the rights of “all men,” not “all Christian men.” Christianity was not a part of the common law of the state, Welch reasoned, because violations of its precepts did not meet with civil sanctions. Yet “it is a Christian country. . . and its laws are made by a Christian people.” In words often ignored by scholars, Welch then asked: “is not the very fact that our laws do *not* attempt to *enforce* Christianity, or to place it upon exceptional or vantage ground, itself a strong evidence that they *are* the laws of a Christian people, and that their religion is the best and purest of religions?” Here, secular law took on a sacred role via religious liberty. Echoing Matthews and the Bible, Welch declared, “True Christianity never shields itself behind the sword.” Welch held that history proved that legal establishment corrupted religion and government. Yes, the two had a relationship: “religion,

Court of Cincinnati. With the Opinions and Decisions of the Court (Cincinnati: Robert Clarke & Co., 1870), 415, 414.

93. Phyllis Field, “Welch, John,” in *American National Biography Online* (New York: Oxford University Press, 2000), <http://www.anb.org/articles/04/04-01044.html> (accessed September 21, 2017); and John Welch, *An Address to the Professors and Students of Franklin College* (Cadiz, OH: W.V. Kent, Book and Job Printer, 1876), 5.

94. Welch, *An Address to the Professors and Students of Franklin College*, 5.

95. “Memorial of Judge John Welch,” *Ohio State Bar Association Proceedings of the Annual Meeting of the Association Held at Put-In-Bay on July 13, 14 and 15, 1892* 13 (Akron: Werner Ptg. & Lith. Co., 1892), 209–11, at 211.

96. See Dorrien, *The Making of American Liberal Theology*, 398–99; and William R. Hutchison, *Religious Pluralism in America: The Contentious History of a Founding Ideal* (New Haven: Yale University Press, 2003), 116–17.

morality and knowledge... have the instrumentalities for *producing and perfecting* a good form of government.” But government could not produce “a good religion.”⁹⁷

Welch argued that teaching religion in public schools was an un-Christian compulsion. While Matthews had asked Protestant judges to imagine themselves a religious minority, Welch imagined himself an orthodox Christian, perhaps to strengthen his resort to dissenting tradition. If the pro-Bible supporters were right, then all teachers in the schools must be Christian, Welch reasoned. He imagined himself as a Christian public school teacher ordered to teach the Bible: “Were I such a teacher, while I should instruct the pupils that the Christian religion was true and all other religions false, I should tell them that the law itself was an *unchristian* law.” Welch explained “one of my first lessons” would teach: “Whatsoever ye would that men should do to you, do ye even so to them...” Welch expanded the Bible quotation beyond what Matthews used: “... for this is the *law* and the prophets.” A law forcing Bible teaching in public schools was no more justifiable than a law taxing a man to support it. Neither could be defended to “the veriest infidel or heathen” because compulsion was not “Christian republicanism,” but “a false Christianity” unworthy of support.⁹⁸ Welch’s Christian republicanism required religious liberty.

Welch quoted James Madison near the end of the decision only after rendering Madison religiously respectable. He wrote that Madison was a man whose “orthodoxy of religious belief no one questions,” yet scholars do.⁹⁹ Madison’s religious beliefs remain “something of a puzzle” to us because of his reluctance to voice them, perhaps a wise discretion in the Early Federal Period when deists risked political ostracism.¹⁰⁰ Welch’s likely source was a mid-century biography, one of several evangelical writing efforts to Christianize a deist founder.¹⁰¹ Yet when Madison wrote his “Memorial and Remonstrance” against the Virginia general tax assessment for the support of all churches in 1785, he did indeed use the Westminster

97. *Board of Education v. Minor*, 246, 247, 249.

98. *Ibid.*, 249–50.

99. *Ibid.*, 254.

100. Lance Banning, “James Madison, The Statute for Religious Freedom, and the Crisis of Republican Convictions,” in *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History*, ed. Merrill D. Peterson and Robert C. Vaughan (Cambridge: Cambridge University Press, 1988), 109–38, at 109; see Eric Schlereth, “A Tale of Two Deists: John Fitch, Elihu Palmer, and the Boundary of Tolerable Religious Expression in Early National Philadelphia,” *Pennsylvania Magazine of History and Biography* 132 (2008): 5–31.

101. William C. Rives, *History of the Life and Times of James Madison* I (Boston: Little, Brown, 1868), 33–34, 602–3; and Verhoeven, *Secularists, Religion and Government*, 133 ff.

Confession in which tradition he had been trained.¹⁰² Alongside historical and political arguments, the “Memorial” held civic coercion to be antithetical to “Christian Religion” as it “discourages those who are strangers to the light of revelation.” Such language may appear to be a ploy to widen its appeal, but Daniel L. Dreisbach’s examination of Madison’s efforts during a revision of Virginia’s laws in the 1780s, including a Sabbath bill and a marriage bill with rules from Leviticus, suggests that Madison’s was “a flexible church–state model that fosters cooperation between religious interests and the civil government” not a strict church–state separation.¹⁰³ Justice Welch drew on Madison’s speech against the 1785 assessment—“Religion is not within the purview of human government”—and from two private letters.¹⁰⁴ Significantly, Welch did not follow the lead of Matthews’s Unitarian co-counsel, George Hoadly. He argued that the Bible was not needed for morality, and pointed for proof to classical Romans, Baruch Spinoza, and “the so-called Infidel,” Ralph Waldo Emerson of whom he wrote; “No word of his, but is a trumpet blast, loudly calling to a better life.”¹⁰⁵ Perhaps so, but Welch did not invoke Emerson, whom he admired, only a founder rendered religiously orthodox.

However much he doubted the Bible, Welch made nothing of George Hoadly’s extensive foray into higher criticism, scholarship from Germany that questioned traditional claims of its writing. Hoadly argued that the publication in 1869 of the *Codex Sinaiticus*, the oldest Bible manuscript, meant that the correct ending of the Lord’s Prayer was now so unclear that asking children to recite it was impossible.¹⁰⁶ In contrast, Welch referenced the Bible as authority rather than questioning its texts.

102. See Garrett Ward Sheldon, “Religion and Politics in the Thought of James Madison,” in *The Founders on God and Government*, ed. Daniel K. Dreisbach, Mark David Hall, and Jeffrey H. Morrison (Lanham, MD: Rowman & Littlefield, 2004), 83–115; Ralph Ketcham, “James Madison and Religion—A New Hypothesis,” *Journal of the Presbyterian Historical Society* 38 (1960): 65–90; and Ralph Ketcham, *James Madison: A Biography* (New York: Macmillan, 1971), 46ff.

103. Dreisbach, “A New Perspective on Jefferson’s Views,” 183.

104. *Board of Education v. Minor*, 252. Welch paraphrased Madison’s “Notes of Speech Against Assessment for Support of Religion. November 1784,” Rives, *History of the Life and Times of James Madison*, 1:605, n. 1; Welch quoted Madison to Edward Everett, March 19, 1823, and to Edward Livingston, July 10, 1822, also found in Rives.

105. “Argument of George Hoadly,” *The Bible in the Public Schools. Arguments in the Case of John D. Minor et al. Versus the Board of Education of the City of Cincinnati et al. Superior Court of Cincinnati. With the Opinions and Decisions of the Court* (Cincinnati: Robert Clarke & Co., 1870), 139, 137.

106. “Argument of George Hoadly,” 131; Stanley E. Porter, and Constantin Von Tischendorf, *Constantine Tischendorf: The Life and Work of a 19th-Century Bible Hunter* (New York: Bloomsbury T&T Clark, 2015); Donald Coggan, “Lord’s Prayer,” in *The*

Similarly, Welch did not adopt the indictments of the Bible by co-counsel John Stallo, a German immigrant who followed Hegel's notions of social and moral evolution.¹⁰⁷ Stallo condemned the Hebraic books for violence, "immorality and sensuality," and praised Christ's Golden Rule only to point out the hypocrisy of a faith that "burned the heretic at the stake." In a country where Protestantism and republicanism were often equated, Stallo condemned Christianity for teaching men to turn the other cheek instead of "the spirit of stalwart and manly self-assertion" needed to win the American Revolution and preserve the Republic, and for discouraging "that free and courageous thought" that challenges religious dogmas and despotic political power equally.¹⁰⁸ Welch may have shared some of these rationalist views, but he did not voice them in *Minor* at a time when those who rejected Christianity entirely often paid a high social price.¹⁰⁹

Welch did invoke the arena theory of religious liberty, where faiths compete so that the truth may win out, which overlapped with Matthew's evangelizing framework. "Let religious doctrines have a fair field. . . and the best will triumph in the end." Welch urged an attitude of loving tolerance similar to Matthews's and with the same purpose: to bring more people to the faith. "If you desire people to fall in love with your religion, make it lovely. If you wish to put down a false religion, put it down by kindness. . . ." To use force was to abandon "your own religion,"—clearly Christianity—for Welch then added, "even heathen writers have learned and taught this golden truth." To demonstrate this, he quoted Buddha, whose ethical positions appealed to liberal Protestants like himself, and then he drew a parallel to Christianity, thus rendering an Asian faith acceptable to more orthodox Ohioians: "'Let a man overcome anger by love, evil by good, the greedy by liberality, and the slanderer by a true and upright life.' Christianity is full of this truth. . . ."¹¹⁰ Christ's command to turn

Oxford Companion to the Bible, ed. Bruce M. Metzger and Michael D. Coogan (New York: Oxford University Press, 1993), 464–65; and Albert S. Cook, "The Evolution of the Lord's Prayer in English," *The American Journal of Philology* 12 (1891): 59–66.

107. Lloyd D. Easton, *Hegel's First American Followers: The Ohio Hegelians: John B. Stallo, Peter Kaufmann, Moncure Conway, and August Willich* (Athens: Ohio University Press, 1966).

108. "Argument of J.B. Stallo," *The Bible in the Public Schools. Arguments in the Case of John D. Minor et al. Versus the Board of Education of the City of Cincinnati et al, Superior Court of Cincinnati. With the Opinions and Decisions of the Court* (Cincinnati: Robert Clarke & Co., 1870), 67, 80–81, 97–98.

109. See Schmidt, *Village Atheists*, 23–24.

110. *Board of Education v. Minor*, 251–52; and Thomas A. Tweed, *The American Encounter with Buddhism, 1844–1912: Victorian Culture and the Limits of Dissent* (Chapel Hill: The University of North Carolina Press, 2000), 115–21.

the other cheek, to love one's enemies, would have arisen in many minds. To most Christians, such a parallel hardly shook their faith's superiority as it proved not the value of all religions, but rather the conversion potential of pagans.¹¹¹

Welch urged Ohioans to believe in religious pluralism. "Three men—say, a Christian, an infidel, and a Jew—ought to be able to carry on a government for their common benefit," that protects them all in their worship and search for truth.¹¹² He had written so much in hopes of encouraging "a harmony of views and fraternity of feeling," so that the men managing the state of Ohio might be instrumental in "working out for us what all desire—the best form of government and the purest system of religion."¹¹³ Welch's deft integration of radical and orthodox religious discourses may explain both the unanimity of this decision by an elected bench and the relative peace that greeted the decision. Radical and orthodox believers, majority and minorities, all could find solace in its logic. Of course, by leaving school boards to their own discretion, the decision defused any statewide objections.

Protestant critics resisted these invocations of the Golden Rule or "the great question of Equity" with three arguments.¹¹⁴ First, the King James Bible was not sectarian. Cincinnati Unitarian minister Amory D. Mayo argued "the Bible read without note or comment, singing Old Hundred," that is, the hymn "Praise God, from Whom all Blessings Flow," and the Lord's Prayer stood on the "great common ground" of religion and could not violate the Golden Rule.¹¹⁵ Second, Catholics did not seek equity; their complaints were a ruse to destroy state education and gain a share of the school fund.¹¹⁶ Lastly, republicanism required religious training. The state guarantees "the free and full enjoyment" of religious liberty, declared *The Biblical Repertory and Princeton Review*, but must not take it "so far" as to "ignore or disown. . . dependence upon the Supreme Ruler and Sovereign Lord of all" and reduce its citizenry to "mere animals." Since "neutrality is impossible," the Christian majority should set the

111. Hutchison, *Religious Pluralism in America*, 132–136; David Mislin, *Saving Faith: Making Religious Pluralism an American Value at the Dawn of the Secular Age* (Ithaca, NY: Cornell University Press, 2015), 43 ff.

112. *Board of Education v. Minor*, 252.

113. *Ibid.*, 254.

114. "The Bible Question Once More: Judge Matthews Answered from the Pulpit," *Cincinnati Daily Enquirer*, December 13, 1869, 8.

115. "Rev. A. D. Mayo's Review of the Anti-Bible Meeting in Mozart Hall," *Cincinnati Commercial Tribune*, April 4, 1870, 1.

116. "The School Question," *Cincinnati Daily Gazette*, April 2, 1870, 2; "Judge Matthews," *Cincinnati Daily Gazette*, March 31, 1870, 2; and "'Anti-Bible' Meeting—Matthews and Lilienthal," *Cincinnati Daily Gazette*, April 4, 1870, 1.

religious standards in schools, not “Mormons, Chinese, Jews, idolaters, atheists, and infidels.”¹¹⁷ That “all sects are on the same footing before the law, whether Pagan, Roman or Christian” was unthinkable to the *New York Evangelist*.¹¹⁸ In short, one could not do unto other (inferior) religions without civic damage.

This resistance fits a historical pattern, because dissenting Christians extended religious liberty for religion’s sake, and never universally. Colonial Baptists could be “positively vitriolic” about Universalists, Shakers, and Methodists as “corrupt and dangerous heretics.”¹¹⁹ The Presbyterian clergy of Virginia in 1785 were “as ready to set up an establishment which is to take them in as they were to pull down that which shut them out,” James Madison growled, although lay objections forced them to retreat.¹²⁰ As Christian dissenters grew in numbers, they embraced state power. Anson Phelps Stokes wrote in 1950 that the Baptists “fought heroically to secure their own freedom,” but “their record” on religious freedom for Catholics and religious liberals “has not been so uniformly good.”¹²¹

Yet Matthews seems to have shifted the debate to some degree. Despite their objections to his published brief, religious journals admitted grudgingly, “we see the full strength of the argument against the Bible.”¹²² *The New York Evangelist* printed a letter from a Cincinnati declaring Matthews’s argument as rising “to an eloquence that was sublime.”¹²³ It was an “exceedingly able, adroit, and learned” argument and “a considerable class of Protestants, including some ministers and laymen of eminence” had adopted the position, admitted *The Biblical Repository and Princeton Review*.¹²⁴ A local newspaper noted in 1873, “many who held the Bible a perfect rule of faith and conduct” opposed it in the schools.¹²⁵ Orthodox Protestants criticized the brief, but could not condemn so obviously pious a man as Matthews, a phenomenon that may have encouraged other dissenting Christians to speak out. A Presbyterian minister praised

117. “ART. VIII.—Recent Publications on the School Question,” *Biblical Repository and Princeton Review* 42 (April 1870): 313.

118. “Article 3 — No Title,” *New York Evangelist* 42 (1870): 3.

119. William G. McLoughlin, “Isaac Backus and the Separation of Church and State in America,” *American Historical Review* 73 (1968): 1392–413, at 1398.

120. Quoted in Irving Brant, *James Madison: The Nationalist, 1780–1787* (Indianapolis: Bobbs-Merrill, 1941–1961), 2:348.

121. Anson Phelps Stokes, *Church and State in the United States*, 3 vols. (New York: Harper, 1950), I:762.

122. “EDITOR’S TABLE...” *Ladies’ Repository* 30 (1870): 158.

123. “The Bible in the Schools,” *New York Evangelist* 40 (1869): 8.

124. “ART. VIII.—Recent Publications on the School Question.”

125. “The Qualifications Of The Rev. Thomas Vickers For Librarian,” *Cincinnati Daily Gazette*, November 26, 1873, 4.

Matthews's "open, manly, earnest advocacy of the infallible divine authority of the Bible and of the religion of Christ."¹²⁶ A Methodist Episcopal journal took heart in the fact that Matthews's "eloquent and even tearful tribute to the truth and worth of Christianity" countered the slurs of his fellow counsel.¹²⁷ Matthews re-integrated swiftly into religious and political life. Before the Ohio court ruled, Matthews became trustee at a Presbyterian seminary and addressed a synod; by 1876, he received an honorary LLD from a Presbyterian university.¹²⁸ After the Ohio decision, a newspaper noted: "All his feelings and sympathies were with the Bible."¹²⁹ Opponents of Matthews never raised the Bible War when he ran for Congress in 1876, or when he was nominated for the Supreme Court in 1881, the bench from which he issued an anti-polygamy decision.¹³⁰ In contrast, Judge Taft's "kicking the Bible out of the school-house door" effectively disqualified him from ever gaining public office again in Ohio.¹³¹ The manner in which one removed religion from public life mattered.

Minor was not the watershed that some scholars imagine, because it collided with pedagogical theories dating to the common school crusade of the 1830s.¹³² Although Bible reading had continued in Cincinnati because of the Superior Court injunction and more pro-Bible candidates won seats

126. "The Bible Question Once More. Judge Matthews Answered from the Pulpit," *Cincinnati Daily Enquirer*, December 13, 1869, 8.

127. "EDITOR'S TABLE..."

128. "Lane Theological Seminary," *New York Evangelist* 41 (1870): 4; [Cincinnati synod] *Interior*, October 31, 1872, 2; [International Presbyterian meeting] "Sentinel Bayonet Thrusts," *Indianapolis Sentinel*, March 21, 1877, 7; [Wooster University degree] *Rocky Mountain Presbyterian*, July 1, 1876, 3.

129. "The Bible in the Schools," *Cincinnati Enquirer*, June 28, 1873, 4.

130. See "Local Politics. The Republican County Convention Yesterday," *Cincinnati Daily Enquirer*, August 9, 1876, 8; "Matthews, Stanley," *The National Cyclopaedia of American Biography* 2 (New York: James T. White and Company, 1892), 476–77; "Justice Stanley Matthews," *The Green Bag* 1 (1889): 181–83; Harold M. Helfman, "The Contested Confirmation of Stanley Matthews to the United States Supreme Court," *Bulletin of the Historical and Philosophical Society of Ohio* 8 (1950): 155–170; and *Murphy v. Ramsey*, 114 U.S. 15 (1885).

131. "Guernsey County Politics," *Cincinnati Enquirer*, July 15, 1879, 5; see also "How Does Judge Taft Stand?" *Cincinnati Enquirer*, May 7, 1875, 4; Clifford H. Moore, "Ohio in National Politics, 1865–1896," *Ohio Archaeological and Historical Publications* 37 (1928): 220–427, 298–300, 321–22; and Samuel DeCanio, *Democracy and the Origins of the American Regulatory State* (New Haven: Yale University Press, 2015), 132–48.

132. See Steven K. Green, *The Second Disestablishment: Church and State in Nineteenth-Century America* (New York: Oxford University Press, 2010), 287; and Stephan E. Brumberg, "The Cincinnati Bible War (1869–1873) and Its Impact on the Education of the City's Protestants, Catholics, and Jews," *American Jewish Archives Journal* 54 (2002): 11–46; versus Nancy R. Hamant, "Religion in the Cincinnati

on the school board in 1870, the reaction to *Minor* in 1873 was muted.¹³³ Local papers praised the decision or demanded action at the next board election, while Cincinnati's principals wrote reports trying to disentangle morality from religion while quoting the Bible.¹³⁴ Cincinnati's public school enrollment numbers stagnated right after the Bible War, then began an unchecked upward trajectory under John Bradley Peaslee, School Superintendent from 1874 to 1886, the man who identified what he called "the best method—the use of the Bible being forbidden—of imparting moral instruction."¹³⁵ In place until at least 1900, Peaslee's memorization and recitation program assumed that children could be taught only by training "the will under a deep sense of that Supreme Authority that is back of family, school and state."¹³⁶ These poetical and prose "memory gems" taught belief in God, a heavenly Father, good, loving, and all-powerful if at times mysterious; in heavenly life after death; and in the religious duty to adhere to virtue.¹³⁷ Christ was absent; Christmas was not. Such memorization programs so paralleled Sunday school practices that schoolroom poetry became "affiliated" with Christian worship.¹³⁸ Peaslee and his successor E.E. White had outflanked the *Minor* decision. At the National Education Association meeting in 1886, Peaslee declared: "No Board of Education has ever said, to my

Schools, 1830–1900," *Bulletin of the Historical and Philosophical Society of Ohio* 21 (1963): 239–51.

133. Perko, *A Time to Favor Zion*, 192–195.

134. *Report of the Committee on Moral Instruction Before the Cincinnati Principals' Association...* (Cincinnati: Robert Clarke & Co., 1873); *Report on Moral Instruction Before the Cincinnati Principals' Association, May 1, 1875* (n.p.); "Moral Instruction in the Public Schools," *Cincinnati Commercial Tribune*, December 14, 1873, 3; "The Principals' Association on Moral Instruction," *Cincinnati Daily Gazette*, June 21, 1875, 3; see also, "Education In Ohio. The Meetings at Put-in-Bay—..." *Cincinnati Daily Gazette*, July 3, 1873, 2.

135. Perko, *A Time to Favor Zion*, 209, table 3; John B. Peaslee, *Thoughts and Experiences In and Out of School* (Cincinnati: Curts & Jennings, 1900), 82; see also Peaslee, "Moral and Literary Training in the Public Schools," in *The Addresses and Journal of Proceedings of the National Educational Association...* (Salem, OH: Allen K. Tatem, 1881), 104–17.

136. E.E. White, "Moral Training in the Public School," *The Journal of Proceedings and Addresses of the National Educational Association* (Salem, OH: Observer Book, 1887), 128–38, at 135; see the principals' reports cited in note 134 for identical expressions.

137. See John B. Peaslee, *Poetical and Prose Selections* (Cincinnati: J. R. Mills & Co., 1878).

138. Joan Shelley Rubin, "Making Meaning: Analysis and Affect in the Study and Practice of Reading," in *Print in Motion: The Expansion of Publishing and Reading in the United States*, ed. Carl F. Kaestle and Janice A. Radway (Chapel Hill: University of North Carolina Press, 2009), 511–27, at 520.

knowledge, that God and our responsibility to the Deity should not be taught in the public schools,” while White identified the three methods to teach of God that survived *Minor*: “Sacred song, the literature of Christendom, and best of all, faithful and fearless Christian teachers, the living epistles of the truth. Against these there is no law.”¹³⁹

For that matter, there was no law against Bible reading. The Ohio attorney general determined in 1923, “READING OF BIBLE IN PUBLIC SCHOOLS IS NOT VIOLATION OF CONSTITUTIONAL RIGHTS.”¹⁴⁰ The legislature promptly passed a Ku Klux Klan-sponsored compulsory Bible-reading law.¹⁴¹ As canny as Justice Welch, Governor Vic Donahey vetoed the law in 1925, and praised both “separation of Church and State” and home rule.¹⁴² He thus left undisturbed the tendencies of Ohio’s decentralized educational system under *Minor*: metropolises limited pan-Protestant curricula; smaller, homogenous communities retained them.¹⁴³ That same year in New Liverpool, Ohio, a judge ruled that the school board had the power to implement a new religious program.¹⁴⁴ “Opening exercises. . . of scriptural readings, prayers and hymns” were common in Ohio’s public schools until 1913, the 1920s saw an increase in release-time religious programs, and a 1939 study estimated that 85% of Ohio students did Bible reading.¹⁴⁵ In St. Bernard, adjacent to Cincinnati, Catholic schools staffed by nuns functioned as public schools until Protestants and Other Americans United For the Separation of Church and State threatened a lawsuit at mid-century.¹⁴⁶ A survey of Cincinnati’s schools in 1964 revealed that all had Christian holiday programming, half had release-time sectarian programs, 40% had prayer at

139. E.E. White, “Moral Training in the Public School,” [discussion], 141, 138. Beyerlein misconstrues White’s position in “Educational Elites and the Movement to Secularize Public Education,” 178–79.

140. “Reading of Bible in Public Schools Is Not Violation of Constitutional Rights” *Opinions of the Attorney General of Ohio* 1 (Cleveland: Banks-Baldwin Law Pub. Co, 1923), 127:893–96; and the opinion cited *Donahoe v. Richards*, 38 Maine R. 376 (1854).

141. David Chalmers, “The Ku Klux Klan in Politics in The 1920’s,” *The Mississippi Quarterly* 18 (1965): 234–47.

142. See Nancy Russell Hamant, “An Historical Perspective on Religious Practices in Selected Ohio School Districts” (EdD diss., University of Cincinnati, 1967).

143. Quoted in “Ohio Governor Vetoes School Bible Bill,” *New York Times*, May 1, 1925, 3.

144. Confrey, *Secularism in American Education*, 101.

145. Bernard Mandel, “Religion and the Public Schools of Ohio,” *Ohio Archaeological and Historical Quarterly* 58 (1949): 185–206; and Alvin W. Johnson “Bible Reading in the Public Schools,” *Education* 59 (1938–39): 274–80, at 279.

146. See Sarah Barringer Gordon, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 77–84.

school assemblies, and a handful started the day with prayer and Bible reading.¹⁴⁷ Anecdotal evidence indicates that Bible reading continued in some Ohio urban public schools into the 1970s.¹⁴⁸

* * *

Christian dissenting theory is so apparent in Matthews's brief and in *Minor* that its neglect by scholars is puzzling. When Steven K. Green writes that Matthews believed that "neither the government nor the law was founded on Christian principles, and neither had a role in promoting religion in any form," we see the persistent influence of a secularization narrative that excludes religion's power to frame law, including law promoting religious liberty.¹⁴⁹ When Green writes that neither Matthews nor *Minor* deemed Bible reading "essential for a common education or republican society," he erases from the historical record the appearance of dissenting Christian tradition in juristic consciousness. For Matthews, the sacralization of religious liberty under law partnered with his Protestant duty to regenerate his fellow citizens. For Welch, the sacralization of religious liberty facilitated the expression of an unpopular policy option in orthodox Christian terms. The fact that Justice Welch's dicta stopped well short of separating law from religion indicates his awareness of the limits of religious liberty in popular consciousness and pedagogic practice. Scholars recognize such limits in telling the story of anti-Catholicism generally, but have done so only rarely in recounting the effect of the Bible War.

Despite their awareness of the problem of ascribing unwarranted efficacy to appellate decisions, in their quest for periodization, historians strain to identify legal "landmarks" after which church–state debates move universally and permanently toward secularization.¹⁵⁰ When one such "landmark" turns out to have occurred because of the deliberate invocation of Christian dissenting tradition and was followed by pedagogues and populations choosing to continue religious training in public schools, it becomes clear that we have overlooked the multiple levels and spaces where individuals raised and resolved religious liberty claims, something we should have known to avoid from the many works that have extended legal historical research beyond appellate courtrooms. We have also overlooked the sacred

147. *Practices Relating to Religion in the Cincinnati Public Schools* (Cincinnati: Cincinnati School Foundation, 1964).

148. Author's email correspondence with Barry Cushman on Columbus, Ohio, October 10, 2017.

149. Green, *The Bible, the School and the Constitution*, 110.

150. Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 1985 (1985): 889–936.

frameworks of juristic and popular consciousness. Perhaps it is easier for scholars to recognize religion's power over juristic reasoning when judges relied upon orthodox Protestantism in order to limit the religious liberty of minority faiths in the nineteenth century, as in the Mormon polygamy case. It is more difficult when a judge used orthodox Christian reasoning to withdraw religion from public space—or made its withdrawal a legal option—and to defend minority rights. Nonetheless, religion framed legal reasoning on both sides of the Bible War debate as it had done in church/state debates in the previous century.

Religion's power to frame law, and to limit or extend religious liberty, was part of the negotiation between sacred and secular in the eighteenth and nineteenth centuries and beyond. Its persistent power renders intelligible the widespread popular shock that greeted the United States Supreme Court's decisions of the twentieth century declaring religion in the public schools unconstitutional. Large swathes of the American population had remained unmoved by the "secular revolution," and educational praxis remained a patchwork of regional and metropole/periphery divides of the kind found in Ohio.¹⁵¹ "Resurgent" Protestantism after World War II and its claims on public space and power prompted a Baptist scholar to remind his religious fellows of *The Great [Voluntaristic] Tradition of the American Churches* that Matthews had championed, yet political conservatives were then developing a constitutional tradition that incorporated Christian capitalism and morality even as liberals governed at the national level under their own constitutional tradition.¹⁵² Resistance to the court's decisions on public schools and other issues gave rise to the culture wars of the 1980s, which have persisted into the twenty-first century.¹⁵³

The possibility of weaponizing constitutional history may have encouraged the simplification of historical church/state quarrels. Two overarching narratives often compete in the historiography of the Founding Era—either ours is a Christian nation or a secular republic—and it seems to follow that we now have a duty to make good on whichever is the correct narrative.¹⁵⁴

151. See Bruce J. Dierenfield, *The Battle over School Prayer: How Engel v. Vitale Changed America* (Lawrence, KS: University Press of Kansas, 2007), 2, table 1.1, 183, table 8.1.

152. Kevin M. Schulz, *Tri-Faith America: How Catholics and Jews Held Postwar America to Its Protestant Promise* (New York: Oxford University Press, 2011), 121; Winthrop S. Hudson, *The Great Tradition of the American Churches* (New York: Harper, 1953); and Ken I. Kersch, *Conservatives and the Constitution: Imagining Constitutional Restoration in the Heyday of American Liberalism* (Cambridge: Cambridge University Press, 2019).

153. See *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

154. Daniel L. Dreisbach and Mark David Hall, eds. *Faith and the Founders of the American Republic* (New York: Oxford University Press, 2014), 4.

Perhaps this is why scholars reading the Bible War briefs tend to focus upon certain legal arguments and ignore others.¹⁵⁵ But, as Leigh Eric Schmidt has suggested, we can reject both storylines as inadequate characterizations of the past. Placing this particular historical quarrel from Ohio within the theological and legal frameworks that its participants invoked demonstrates the need to resist any temptation to oversimplify. History writing can illuminate the range of choices available to yesterday's disputants, but those choices remain, as does the hard work that a democracy requires in settling its quarrels.

155. See Green, *The Bible, the School, and the Constitution*, 116, 123–124; and Brumberg, “The Cincinnati Bible War,” 26.